

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
1420 East 6th Avenue
Helena, MT 59620

July 10, 2003

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; John Lane.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; other Department personnel.

Guests: Bert Otis; Neal Wedum; John Neumann; Robin Cunningham, FOAM; Mary Ellen Schnur, MOGA; Don Nickman, PPSA; Linda Peterson, Department of Transportation; Carla Haas, Department of Transportation; Bruce Farling, Montana Trout Unlimited; John Murnane.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of June 12, 2003 Commission Minutes**
- 3. Approval of Commission Expenses through June 30, 2003**
- 4. Adoption, Amendment and Repeal of Rules - Approval.**
- 5. Variable Priced Outfitter Sponsored Licenses - Final.**
- 6. Rule Amendments Pertaining to Boundaries and Seasons within Teton-Spring Creek Bird Preserve near Choteau - Tentative.**
- 7. Lewis & Clark FAS Water System Pump Station at Fort Peck Reservation near Wolf Point - Informational.**
- 8. Emigrant West FAS Land Exchange (Bert Otis) / Recreational Site Permit from DOT - Final.**
- 9. Fishing Regulations - Tentative.**
- 10. Bauska Easement - Final.**

1. Opening - Pledge of Allegiance. Chairman Dan Walker called the meeting to order at 8:12 a.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes.

Action: Brenden moved and Lane seconded the motion to approve the minutes of the June 12, 2003 meeting. Motion carried.

3. Approval of Commission Expenses through June 30, 2003.

Action: Lane moved and Mulligan seconded the motion to approve the Commission expenses through June 30, 2003 as presented. Motion carried.

4. Adoption, Amendment and Repeal of Rules - Approval. Becky Dockter, FWP Legal Counsel, stated that the Department is required to do a rule “cleanup” every two years to determine if any rules need to be amended, repealed, or adopted. She said at this time there are no new restrictions, only three corrections related to recreational water use rules, and the repeal of ARM 12.11.345 which will then be divided into 14 separate rules for each dam involved.

Dockter said mistakes in the Thompson Chain of Lakes ARM will be addressed to identify Leon Lake and Lost Lake as lakes within the Thompson Chain of Lakes, consistent with other lakes within the Chain, and to clarify that only the channel between the Middle and Lower Thompson Lakes is a no-wake zone rather than the entire Lake. She added that Hebgen Lake, Beaverhead River, and Big Hole River need to be added to the Index Rule as they were inadvertently left out of the ARM.

Action: Brenden moved and Lane seconded the motion to approve the rule proposals as recommended by the Department, which is to adopt new rules I through XIV, repeal ARM 12.11.345, and amend ARM Rules 12.11.501, 12.11.3435, 12.11.3455, and 12.11.3460. Motion carried.

5. Variable Priced Outfitter Sponsored Licenses - Final. Dan Ellison, FWP Administration and Finance Administrator, brought forward the final rule recommendation for setting B-10 and B-11 license fees. Two rule options had been presented in April for the purpose of establishing a process to determine target numbers of B-10 and B-11 licenses each year for a 5-year period. A hearing held June 4 generated no public participation, and only one comment was received during the comment period, which ended June 13. The lone comment, received from the Montana Outfitters and Guides Association, expressed support of Option A, the unit calculation method. This method evaluates the number of licenses sold within a 5-year period of time (self inclusive and previous years) to determine the number of licenses to be available the next year.

Walker reminded the Commission that Commissioner Murphy had endorsed the Olympic rolling method in April, and in his absence, questioned Ellison on the choice to recommend the unit method based on one comment by MOGA. Ellison said this option (Option A) will provide consistency and stability, and that it is similar to past procedures. Mulligan said the License Committee is in favor of the Unit method. Hagener agreed, and said the License Committee had replaced the rolling method in favor of the 5-year method, feeling it offers consistently, and depicts a clear picture of how to calculate the numbers.

Action: Mulligan moved and Lane seconded the motion to approve the Department's recommendation to adopt Option A, the Unit Method, of the proposed Variable Priced Outfitter Sponsored B-10 and B-11 Licenses as a Final Rule. Three in favor, one opposed (Walker). Motion carried.

Hagener said he had sent a memo to Walker, Mulligan and Murphy regarding attendance at the Variable Priced License Advisory Committee meeting on August 15. It has been determined that if Murphy, the designated Commission representative to this committee, is unable to attend the meeting, Mulligan will replace him, and if Mulligan is also unavailable, then Walker will attend.

6. Rule Amendments Pertaining to Boundaries and Seasons within Teton-Spring Creek Bird Preserve near Choteau - Tentative. **Don Childress, FWP Wildlife Division Administrator**, said two landowners petitioned in December 2002 to withdraw their land from this preserve due to what they feel is significant game damage. They feel if they remove themselves from the preserve, they will not incur the financial losses they are currently suffering due to over population of protected game animals on this preserve.

Mike Aderhold, Region 4 Supervisor, said this preserve was developed in 1923 to protect and enhance upland birds, but there is no real need for the preserve anymore. He said the whitetail deer are now causing landowners problems. Discharging of firearms in the preserve is prohibited. Concern is shared by the community relative to safety issues should the preserve be abandoned and the use of firearms be allowed.

Aderhold said the Commission adjusted the road boundary in 1995 for a landowner whose barley field was impacted by the game preserve. At that point, FWP debated abandoning the preserve, but the community was concerned about safety issues related to the discharge of firearms. **Aderhold** stated that the statute that deals with preserves in general indicates that the Commission has authority to adjust preserves, and even to abandon them. However, as this particular preserve was created by the legislature, FWP feels it essential to go to the legislature to request that it be abandoned. **Aderhold** said this is the 4th attempt to abandon it.

Aderhold said the Region's position is to agree to the withdrawal of the two property owners lands, but he said the safety issue will reoccur. He said also proposed is a special weapons restriction within the boundaries of the existing preserve. This restricted area can be adjusted, based upon public comment, to establish safety zones where necessary. Ultimately, the goal is to abandon the preserve and address the deer problems through a game damage program.

Mulligan asked about restrictions within the preserve. **Aderhold** replied that the preserve is divided into HD404 and HD450, and will be open to the general public under special weapons restrictions.

Aderhold stated that a public hearing will be held August 21 in Choteau to elicit comments regarding this rule. Results of this hearing will be brought before the Commission at the September meeting. Adequate notice will be advertised to allow the public the opportunity to attend the hearing, and there will be a comment period as well.

Walker invited the audience to comment. Residents from the Choteau area expressed concerns regarding firearms dangers to both children and traffic in the area if a weapons restricted area is allowed. Another resident noted that due to a high density of deer in the area, many accidents occur on the road; his opinion was that a weapons restriction area would be welcome. Some do not want firearms in the area at all, while others request a weapons restricted area.

*Action: **Lane** moved and **Mulligan** seconded the motion to approve the amendment of ARM 12.9.211, allowing the withdrawal of the two ranch properties from the preserve, and to approve a special weapons restriction area. **Mulligan** clarified that FWP has no authority over weapons used for target practice. Motion carried.*

7. Lewis & Clark FAS Water System Pump Station at Fort Peck Reservation near Wolf Point - Informational. Chris Hunter, FWP Fisheries Division Administrator, said a major water supply system, Fort Peck Reservation Rural Water System (FPRRWS), is being proposed for construction to provide water from the Missouri River to users in Valley, Daniels, Sheridan, and Roosevelt Counties. This water would be used for drinking, for irrigation, and for industrial use over a 7,800 mile area. The proposal is to develop a withdrawal intake and treatment plant near the town of Poplar. An intake, pump station, and water line are proposed for installation on the Lewis & Clark FAS, which would require the disposal of 3.29 acres located in the middle of the FAS. An existing highway is west of the area requested, and west of the highway are FWP's improvements (boat ramp, parking and camping areas), therefore no impact will be made on the FAS. Potential mitigation measures are being drawn up, and a separate EA is required for disposal of property.

This FAS area was determined to be the best location for the water intake structure after an Environmental Assessment indicated that streambed patterns, water depth, and river bank terrain were conducive to the project. Paddlefish larvae and other species of aquatic wildlife would not be impacted as the intake structure is located on the bottom of stream, whereby water is not "sucked" in, but merely drops into the pipe. This site will provide water to the entire project.

Walker asked why FPRRWS wants to purchase this property rather than obtain an easement. **Darlene Edge, FWP Land Agent**, said they wanted to own the property their improvements and equipment were on. She said FWP preferred an easement, but FPRRWS preferred to purchase the land. She said it can still be negotiated at this point, and added that FWP will still have access across the property.

Action: The Commission recommended proceeding with the negotiations necessary for the land disposal at the L & C FAS to provide a location for an intake, a pump station, and pipeline for the FPRRWS project.

Brenden asked to be kept apprised of this project.

8. Emigrant West FAS Land Exchange (Bert Otis) / Recreational Site Permit from DOT - Final. Hunter said FWP proposes to exchange .643 acres with Bert Otis for .403 acres on the Yellowstone River. This land is adjacent to other FWP property, and will allow better access from the highway to the Emigrant West FAS, and will accommodate Mr. Otis' needs as well. Currently, people are trespassing on Mr. Otis' land to get to the FAS; this would not be the case with the land exchange. The two tracts appraise at equal value. The exchange is subject to the approval of the National Park Service as the site was acquired with Land and Water Conservation funds.

FWP also proposes to accept a no-cost Recreational Site Permit for 1.38 acres from the Montana Department of Transportation for access to the Yellowstone River from the bridge on Murphy Lane. This permit is similar to a lease, however it is between two state agencies at no cost, and is for a 10-year period.

This proposal was originally brought before the Commission in August of 2002. An EA has since been completed, and the public comment period generated no public comments. A Decision Notice was issued May 20, 2003 recommending approval.

Action: Mulligan moved and Brenden seconded the motion to approve the Department's recommendation to proceed with the land exchange between FWP and Bert Otis subject to approval by the National Park Service, and to accept the Recreational Site Permit from MDT at Murphy Lane Bridge. Motion carried.

Mr. Otis thanked the Commission for their decision, saying he feels it is beneficial to all involved.

9. Fishing Regulations - Tentative. Hunter began by acknowledging **Karen Zackheim, FWP Fisheries Management Bureau Chief**, for her efforts and the many hours she has devoted to improving the fishing regulations. Karen organized a committee of 20 people to work through the fishing regulations in an attempt to simplify them and make them more understandable.

Hunter said the tentative regulations will be posted on FWP's web page, and comments will be accepted until September 15. He said each region will seek public comment in different ways – whatever works best for their area. Final regulations will be adopted in October.

Walker said and **Brenden** concurred that the fishing regulations are complex. Walker stated this new information must be conveyed to the public in the most effective manner possible. It is imperative the public knows of the proposed regulation changes. He feels that in addition to the angling groups, who already read and study the regulations carefully, the ordinary fishing public needs to know about changes in regulations.

Hunter said FWP provides a booklet to license providers outlining regulations. **Mulligan**, a license agent, said that in his store the regulations are placed next to the bait, but still people don't read the regulations. He said fishermen focus on the specific water body they are interested in; they don't look through the whole book. He is hopeful these changes will help. Hunter said standard regulations will be identified on a district by district basis so people need to only check in two places for regulations.

Walker suggested involving senior citizens for additional perspectives to the regulations format. Hunter said only a small percentage of bodies of water are exceptions, and he is considering listing all of them regardless of where they are located.

Hunter introduced **Karen Zackheim, FWP Fisheries Management Bureau Chief**, who said the Committee made over 60 recommendations for improving the regulation booklet. She said the expectations of the website is that it will show maps of individual regions where people can select a particular water body, and the information and regulations specific to this area will be provided.

Zackheim said the committee does not recommend changing the size of the booklet, and she said that the Committee recommended making major changes to the regulations every 4 years, rather than every 2 years, so the public has a longer period of time to adjust to regulation changes. **Zackheim** said the Standards Limits Table, which covers most of the waters in the state, has been revised. She stated it would also be beneficial to come up with strategies for the most common violations such as fishing closed waters, fishing with more than one line, possessing illegal species, no licenses, social conflicts, etc.

Zackheim presented the proposed tentative fishing regulations. They have been divided into four sections for ease in reviewing them.

1st Section: MULTI DISTRICT

Zackheim presented the proposed tentative fishing regulations for the Multi-District area. **Walker** asked if sculpins have been eliminated as bait. **Zackheim** answered that sculpins have not been allowed due to concerns about whirling disease. Mulligan recommended clarifying sculpins vs bullheads as fisherman use terms interchangeably.

Action: Lane moved and Brenden seconded the motion to approve the Statewide or Multi-district tentative regulations as proposed by the Department. Motion carried.

2nd Section: WESTERN DISTRICT

Zackheim indicated there are 54 proposed changes to the Western District. She said the majority deal with adjustments in bull trout and bass. **Walker** said he would like to see youth be able to take at least one fish home.

Bruce Farling, Montana Trout Unlimited, said there are several waters, with considerable use, where 8 fish can be kept. His organization urges the Commission to use caution when setting quotas on Bull Trout. Jim Vashro, FWP Region 1 Fisheries Manager said FWP is also concerned with bringing back the Cutthroat population.

Action: Walker moved and Mulligan seconded the motion to approve the Western District tentative regulations as proposed by the Department. Motion carried.

3rd Section: CENTRAL DISTRICT

Zackheim indicated there are 57 proposed changes to the Central District. She said they are looking at standardizing late season opening dates such as setting a date and abiding by it.

Action: Walker moved and Mulligan seconded the motion to allow youth (14 years of age and under) to take one trout on all waters that are catch and release waters in the Central District, with the exception of endangered species and species of special concern (Cutthroat and Grayling). Motion carried.

Action: Walker moved and Mulligan seconded the motion to approve the Central District tentative regulations as proposed by the Department, with the amendment as above. Motion carried.

4th Section: EASTERN DISTRICT

Zackheim presented the proposed tentative fishing regulations for the Eastern District. **Walker** asked why the lake trout limit is 3 and the possession limit is 3. He was told that the drought period had limited spawning. **Mulligan** suggested clarifying the wording relative to spearing in Ft. Peck. **Walker** asked if obtaining the 1-inch patch of skin for fish identification is a lot of effort for sportsmen, and how effective it is for identification. Enforcement needs a means to differentiate between species, however, this method is not always effective. **Zackheim** said in some areas, in order to differentiate between sauger and walleye, fish must be kept whole until the fishermen are off the waters.

Discussion ensued regarding possible scenarios relative to fishing violations. **Jim Kropp, FWP Enforcement Administrator**, explained that the burden is on law enforcement to prove wrongful events. He said that FWP's approach is low key, and each situation must be evaluated as to whether there may or may not be a violation, dependant upon circumstances, however, some things are kept to the letter of the law. Discretion is essential.

Action: Brenden moved and Walker seconded the motion to approve the Eastern District tentative regulations as proposed by the Department. Motion carried.

10. Bauska Easement - Final. **Dan Vincent, Region 1 Supervisor**, said he, Marty Watkins (Region 1 Parks Manager), and Darlene Edge (FWP Land Agent), met with Ms. Bauska and reviewed the proposal and limitations imposed by the Land and Water Conservation purchases. Ms. Bauska owns 80 acres that she accesses by an easement road crossing FWP property, known as McGregor Peak Road. Two spur roads have been used by the Bauskas for years with no legal easements.

In May, this request was presented to the Commission as a tentative proposal. At that point in time, Ms. Bauska requested two easements that would allow her to divide her property into three parcels. At the May meeting, however, Mrs. Bausaka appeared and stated she would like to split her property into 4 parcels instead. She now wishes to go back to the original proposal of three parcels.

The proposal is: Ms. Bauska would relinquish her 66 foot wide easement on McGregor Peak Road, she would vacate her McGregor Peak Road right-of-way from the junction of Spur 2 to her property line, and FWP would grant her a 40-foot easement on McGregor Peak Road, and grant her two 40-foot easements on the two spur roads. Spur 1 would limit the use to two single-family dwellings, and Spur 2 would be restricted to one single-family dwelling. All roads can be used for natural resource management.

Mulligan said that since there is one spur already, FWP needs to insure that Mrs. Bauska isn't granted the two easements, and then uses the original easement to make a third one. **Lane** asked if she is satisfied with a 40-foot easement. **Vincent** said Mrs. Bauska feels it's adequate. **Lane** suggested verifying the regulations on subdividing to assure 40-foot easements are acceptable. **Vincent** said the intent is not to limit her access.

Action: Brenden moved and Lane seconded the motion to approve the proposal as recommended by the Department with the stipulations that FWP verify that the 40-foot easements are satisfactory to allow access to the three parcels and meet codes, and that a third easement will not be created. Motion carried.

11. Delegation of Authority to Close Waters to Fishing - Final. This proposal is relative to closing waters to fishing during periods of drought; the need to close waters can occur quickly. For the past three years, the Commission has delegated the authority to close waters to fishing to the FWP Director and to the Commissioner in whose district the water body is located in order to expedite the closure process. Once again, this delegation of authority is being sought.

Action: Mulligan moved and Lane seconded the motion to delegate the authority to close waters to fishing during drought conditions in 2003 to the FWP Director and to the Commissioner in whose district the water is located. Motion carried.

Citizens' Open Microphone - Public Opportunity to Speak on Issues Not Discussed at this Meeting.

No issues were brought before the Commission.

Meeting adjourned at 11:50a.m.

Dan Walker, Chairman

M. Jeff Hagener, Director